Supreme Court, U.S.
FILED

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IN THE

Supreme Court of the United States

RONALD QUITMAN ELLIS,
Petitioner,

v.

RONALD HUTCHINSON,
Warden, Maryland House of Corrections,

and

J. JOSEPH CURRAN,
Attorney General of the State of Maryland,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is a guilty plea entered in a state court void under *Boykin v. Alabama* when it is entered by a defendant who is not apprised, on the record, of the nature of the charges, his constitutional rights, or the consequences of being found guilty at trial?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	6
I. STANDARD OF REVIEW TO BE APPLIED TO THE CASE OF A STATE COURT PRISONER PETITIONING FOR FEDERAL HABEAS CORPUS RELIEF	6
II. PETITIONER'S GUILTY PLEA IS VOID UNDER *BOYKIN V. ALABAMA* BECAUSE HE WAS NOT APPRISED, ON THE RECORD, OF THE NATURE OF THE CHARGES, HIS CONSTITUTIONAL RIGHTS, OR THE CONSEQUENCES OF BEING FOUND GUILTY AT TRIAL	9
A. The State Post-Conviction Court Unreasonably Applied Clearly Established Federal Law When It Found That Petitioner Knowingly And Voluntarily Entered His Guilty Plea Despite The Fact That The Trial Judge Did Not Explain The Nature And Elements Of The Charges That Petitioner Was Pleading Guilty To	9

TABLE OF CONTENTS—Continued

Page

B. The State Post-Conviction Court Unreasonably Applied Clearly Established Federal Law When It Found That Petitioner Knowingly And Voluntarily Entered His Guilty Plea Despite The Fact That The Trial Court Never Informed Petitioner Of The Constitutional Rights He Was Waiving As A Result Of Entering A Guilty Plea 10

C. The State Post-Conviction Court Unreasonably Applied Clearly Established Federal Law When It Found That Petitioner Knowingly And Voluntarily Entered His Guilty Plea Despite The Fact That The Trial Judge Misadvised Petitioner As To The Consequences Of Being Found Guilty At Trial 12

III. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ERRED WHEN IT FAILED TO REMAND PETITIONER'S CASE BACK TO THE DISTRICT COURT WHEN THE DISTRICT COURT IMPROPERLY RELIED ON EVIDENCE BEYOND THE PLEA RECORD TO FIND THAT THE STATE POST-CONVICTION COURT HAD NOT UNREASONABLY APPLIED FEDERAL LAW WHEN IT FOUND THAT PETITIONER KNOWINGLY AND VOLUNTARILY ENTERED HIS GUILTY PLEA 14

TABLE OF CONTENTS—Continued

Page

IV. PETITIONER'S CASE GIVES THIS COURT AN OPPORTUNITY TO EVALUATE THE VOLUNTARINESS OF A STATE COURT GUILTY PLEA UNDER THE FEDERAL HABEAS CORPUS STANDARD OF REVIEW 16

CONCLUSION 17

APPENDICES

Appendix A 1a

Appendix B 2a

Appendix C 13a

Appendix D 16a

Appendix E 22a

TABLE OF AUTHORITIES

CASES — Page

Boykin v. Alabama, 395 U.S. 238 (1969) ..... *passim*
Carnley v. Cochran, 369 U.S. 506 (1962) 15
Davis v. Maryland, 278 Md. 103, 361 A.2d 113 (1976) 4
Duncan v. Louisiana, 391 U.S. 145 (1968) 10
Hale v. Lockhart, 903 F.2d 545 (8th Cir. 1990) 13
Henderson v. Morgan, 426 U.S. 637 (1976) 9, 10, 15, 16
Hill v. Lockhart, 474 U.S. 52 (1985) 13
Ivy v. Caspari, 173 F.3d 1136 (8th Cir. 1999) 13
Johnson v. Zerbst, 304 U.S. 458 (1938) 11
Malloy v. Hogan, 378 U.S. 1 (1964) 10
McCarthy v. United States, 394 U.S. 459 (1969) .. 11
Nash v. Israel, 707 F.2d 298 (7th Cir. 1983) 15
North Carolina v. Alford, 400 U.S. 25 (1970) 13, 14
Pointer v. Texas, 380 U.S. 400 (1965) 10
Parke v. Raley, 506 U.S. 20 (1992) 13
Smith v. O'Grady, 312 U.S. 329 (1941) 9
Wade v. Coiner, 468 F.2d 1059 (4th Cir. 1972) 11
Williams v. Taylor, 529 U.S. 362 (2000) 7, 8, 12

CONSTITUTIONAL PROVISIONS

United States Constitution:

Fifth Amendment 10
Sixth Amendment 10
Fourteenth Amendment 3, 10

STATUTES AND RULES

28 U.S.C. § 1254 2
28 U.S.C. § 2254(d)(1) 5, 6, 7, 12
Sup. Ct. R. 10(a) 16
Fed. R. Crim. P. 11(c)(3) 11
Md. Ann. Code art. 27, § 413 (1996) 13

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OPINIONS BELOW

The Memorandum and Order of the Circuit Court for Prince George's County, Maryland (the post-conviction court) dated September 20, 1999, is included in the Appendix as Appendix C. The Memorandum and Order of the United States District Court for the District of Maryland, dated October 25, 2001, is included in the Appendix as Appendix B. The unpublished *per curiam* opinion of the United States Court of Appeals for the Fourth Circuit dated June 3, 2002 is included in the Appendix as Appendix A.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit decided Petitioner's case on June 3, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The full text of the following relevant constitutional and statutory provisions are attached in the Appendix as Appendix E.

1. United States Constitution, Fifth Amendment
2. United States Constitution, Sixth Amendment
3. United States Constitution, Fourteenth Amendment
4. 28 U.S.C. § 1254
5. 28 U.S.C. § 2254(d)(1)
6. Sup. Ct. R. 10(a)
7. Fed. R. Crim. P. 11(c)(3)
8. Md. Ann. Code art. 27, § 413 (1996)

STATEMENT OF THE CASE

On November 9, 1981, Petitioner pled guilty in the Circuit Court for Prince George's County, Maryland, to five counts of murder in the first degree and one count of manslaughter. He was sentenced to five terms of life imprisonment for the five counts of murder, said sentences to run consecutively, and ten years for manslaughter, said sentence to run concurrent with the initial life sentence imposed. That sentence was later reduced with two of the five life sentences being ordered to run concurrent with the initial life sentence.

A review of Petitioner's plea transcript reveals fundamental errors and omissions which have been ignored and overlooked by lower reviewing courts. His is a textbook case of a plea that was not entered knowingly and voluntarily for numerous reasons.

First, the trial court never informed Petitioner of the charges pending against him, nor did the Court explain the elements of those charges. Notwithstanding, the trial court found that "[Petitioner] understands the nature of the charges brought against him" before accepting his guilty plea. Appendix D at p. 18a.

Second, the trial court never told Petitioner about any of the constitutional rights he was waiving by pleading guilty. The transcript is entirely bereft of any advice from the court concerning Petitioner's forfeiture of his right to jury trial, right to confrontation, and privilege against self-incrimination. As a result, the trial court never secured a waiver of those rights from Petitioner. The District Court, however, disagreed. In support of its ruling, the federal habeas court relied on testimony adduced at a subsequent post-conviction hearing to show that Petitioner was aware that he was waiving his constitutional rights at the time he pled guilty. This post-conviction hearing was held more than eighteen years after the guilty plea was entered.

Third, Petitioner had almost no option but to plead guilty because he was essentially told by the trial court that if he were to be found guilty at trial, he would be executed: "[T]he penalty for first degree murder is death by the gas chamber[.]" (Appendix D at p. 18a). This statement was both misleading and coercive.

It is for these three reasons Petitioner has contended that his guilty plea was not knowingly and voluntarily entered and as such violated the Due Process Clause of the Fourteenth Amendment.

On April 24, 1997, Petitioner collaterally attacked his guilty plea, in the Circuit Court for Prince George's County, Maryland by filing a Petition for Post-Conviction Relief. After an evidentiary hearing, the State post-conviction court denied the Petition in a three-page Memorandum Opinion and Order dated September 20, 1999. (See Appendix C). The

substance of the State post-conviction court's discussion of the issues spans little more than one page, is completely conclusory, and contains some portions that are wholly unintelligible.

After discussing the procedural history of the case and the claims presented by Petitioner, the State post-conviction court dismissed the claim that the guilty plea was not entered knowingly and voluntarily. The court stated as follows:

> The Court has studied the transcripts in this case, viewed the totality of the circumstances at the time of the plea agreement, in addition to testimony at the hearing, and this Court finds that the Petitioner did give his plea of guilty intelligently, knowingly, freely, and voluntarily. Therefore, this Court finds no error was committed in the acceptance of the Petitioner's plea.

Appendix C at pp. 14a. The State court then stated:

> This Court considered the testimony at the Post-Conviction hearing which omitted the Petitioner's claim that he was never advised of his rights to a jury trial or as to what a jury trial consists, or that he was never advised to his right of confrontation and his right to contest evidence presented throughout a trial by the State, under his claim of due process rights. In addition to the previously omitted claims, this Court follows the holding in *Davis v. State*, 278 Md. 103, 114 (1976), that states:
>
> > "*Boykin v. Alabama*, 89 S.Ct. 1709 (1969), does not stand for the proposition that the due process clause requires state courts to specifically enumerate certain rights, or go through any particular litany before accepting a defendant's guilty plea; rather we think *Boykin* merely holds that the record must affirmatively disclose that the accused entered his confession of guilty voluntarily and understandingly."
>
> Therefore, Petitioner's due process claim that he was never advised of his rights to testify, or his right to

> utilize the Court's subpoena powers are deemed waived [because the record shows that Petitioner entered his plea voluntarily and understandingly].

Appendix C at p. 14a.

Petitioner then filed in the Court of Special Appeals of Maryland an Application for Leave to Appeal from the denial of post-conviction relief. The Court of Special Appeals denied Petitioner's Application on April 14, 2000, in an unreported opinion. On May 5, 2000, Petitioner filed a Motion for Reconsideration of the unreported opinion of the Court of Special Appeals denying Petitioner's Application for Leave to Appeal. The Motion for Reconsideration was denied on May 11, 2000.

Following the State post-conviction court's opinion, and the denial of Petitioner's Application for Leave to Appeal by the Court of Special Appeals of Maryland, Petitioner sought habeas corpus relief in the United States District Court of Maryland under 28 U.S.C. § 2254.[1] He maintained that the State post-conviction court's opinion in this case is both contrary to, and involved an unreasonable application of, clearly established Federal law as determined by this Court. The District Court issued a Memorandum Opinion and Order dated October 25, 2001, denying Petitioner habeas corpus relief. Parsing through select portions of the record of the State post-conviction proceedings, while ignoring the obviously insufficient plea colloquy, the District Court found that "the post conviction court could reasonably have found the guilty plea to be a voluntary and intelligent choice among the courses of action open to [Petitioner]." Appendix B at p. 11a.

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[1] Petitioner's Petition for a Writ of Habeas Corpus was initially dismissed by the District Court as being time barred. The United States Court of Appeals for the Fourth Circuit later reversed the District Court's ruling, and the Petition was remanded to be decided on its merits.

Petitioner sought to appeal the decision of the District Court in the United States Court of Appeals for the Fourth Circuit. Finding no reversible error, the Court of Appeals denied the certificate of appealability and dismissed the appeal by an unpublished *per curiam* opinion dated June 3, 2002.

The State post-conviction court's summary denial of relief was incorrect in both fact and in law, and was an unreasonable application of clearly established federal law. Moreover, the Court of Appeals dismissed this case based on the District Court's erroneous reliance not on the guilty plea transcript, but on select portions of a State post-conviction proceeding that took place approximately eighteen years after Petitioner's guilty plea was entered. (See Appendix B at p.11a). For these reasons, this Court should grant Petitioner a Writ of Certiorari and reverse the decision of the Court of Appeals.

REASONS FOR GRANTING THE WRIT

I. STANDARD OF REVIEW TO BE APPLIED TO THE CASE OF A STATE COURT PRISONER PETITIONING FOR FEDERAL HABEAS CORPUS RELIEF

The relevant portion of 28 U.S.C. §2254, as amended by the Anti-Terrorism and Effective Death Penalty Act (AEDPA), provides as follows:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

In *Williams v. Taylor*, 529 U.S. 362 (2000), this Court determined the proper standard of review to be applied by federal courts in assessing petitions for habeas corpus relief filed by state prisoners. Justice O'Connor, writing for a majority of the Court on the issue, listed four instances where a state decision would be either contrary to, or an unreasonable application of, clearly established federal law.

This Court, addressing first the "contrary to" language of § 2254(d)(1), noted that a state court judgment would be contrary to clearly established federal law if the state court applied the wrong legal standard in judging a claim of ineffective assistance of trial counsel or denied relief in a case that was factually indistinguishable from a prior holding of this Court. *Williams*, 529 U.S. at 405. For example,

> [i]f a state court were to reject a prisoner's claim of ineffective assistance of counsel on the grounds that the prisoner had not established by a preponderance of the evidence that the result of his criminal proceeding would have been different, that decision would be diametrically different, opposite in character or nature, and mutually opposed to our clearly established precedent because we held in *Strickland* that the prisoner need only demonstrate a reasonable probability that . . . the result of the proceeding would have been different.

Id. at 405-406.

Second, "[a] state-court decision will also be contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent." *Id.* at 406.

The Court next addressed the AEDPA's "unreasonable application" clause, again noting two instances where a state court decision would represent an unreasonable application of clearly established Federal law:

> First, a state-court decision involves an unreasonable application of this Court's precedent if the state court

> identifies the correct governing legal rule from this Court's cases but unreasonably applies it to the facts of the particular state prisoner's case. Second, a state-court decision also involves an unreasonable application of this Court's precedent if the state court either unreasonably extends a legal principle from our precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply.

Id. at 407.

The Court next sought to define the exact meaning of an "unreasonable application of clearly established Federal law" and held that:

> Stated simply, a federal habeas court making the 'unreasonable application' inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable. The federal habeas court should not transform the inquiry into a subjective one by resting its determination instead on the simple fact that at least one of the Nation's jurists has applied the relevant federal law in the same manner the state court did in the habeas petitioner's case. The 'all reasonable jurists' standard would tend to mislead federal habeas courts by focusing their attention on a subjective inquiry rather than on an objective one.

Williams, 529 U.S at 409-10.

For the reasons discussed below, the decision of the State post-conviction court is both contrary to and involved an unreasonable application of, clearly established Federal law, as determined by this Court, namely this Court's decision in *Boykin v. Alabama*, 395 U.S. 238 (1968), and its progeny.

II. PETITIONER'S GUILTY PLEA IS VOID UNDER *BOYKIN V. ALABAMA* BECAUSE HE WAS NOT APPRISED OF THE NATURE OF THE CHARGES, HIS CONSTITUTIONAL RIGHTS, OR THE CONSEQUENCES OF BEING FOUND GUILTY AT TRIAL

A. The State Post-Conviction Court Unreasonably Applied Federal Law When It Found That Petitioner Knowingly and Voluntarily Entered His Guilty Plea Despite The Fact That The Trial Judge Did Not Explain The Nature And Elements Of The Charges That Petitioner Was Pleading Guilty To

A guilty plea is involuntary and void if the defendant is unaware of the elements of the crime he is pleading guilty to, or in other words, is entered "without adequate notice of the nature of the charge against [the defendant], or [without] proof that he in fact understood the charge. . . " *Henderson v. Morgan*, 426 U.S. 637, 645 (1976) (internal citations omitted).

Although Petitioner pled guilty to five counts of first degree murder and one count of manslaughter, the trial court never advised, nor explained to, Petitioner what he was being charged with and what the elements of those charges were. In fact, the *only* mention of first degree murder is when the trial court incorrectly implied that the crime carries a mandatory death sentence. See Appendix D at p. 18a. Likewise, the only mention of manslaughter is a brief explanation of the maximum penalty associated with the crime, and nothing more. These omissions alone render Petitioner's plea unconstitutional and void since an explanation of the nature of the charges against a defendant is "the first and most universally recognized requirement of due process." *Smith v. O'Grady*, 312 U.S. 329, 334 (1941).

The plea transcript contains no evidence that Petitioner understood, or was even aware of, the charges pending against him. Nonetheless, he pled guilty, and the trial court accepted his plea. Certainly, this Court can not find that the State post-conviction court reasonably applied the holding in *Henderson* and *Boykin* in finding that Petitioner's plea was knowing and voluntary when the Petitioner was not apprised of the nature of the charges he was pleading guilty to.

B. The State Post-Conviction Court Unreasonably Applied Federal Law When It Found That Petitioner Knowingly and Voluntarily Entered His Guilty Plea Despite The Fact That The Trial Court Never Informed Petitioner Of The Constitutional Rights He Was Waiving As A Result Of Entering A Guilty Plea

In *Boykin*, this Court addressed the prerequisites for entering a plea of guilty. Noting that the "[a]dmissibility of a confession must be based on a reliable determination on the voluntariness issue which satisfies the constitutional rights of the defendant[,]" this Court recognized that an admission of guilt impacts three constitutional rights, all of which the defendant must be advised of and must affirmatively waive. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by the Fourteenth Amendment. *Malloy v. Hogan*, 378 U.S. 1 (1964). Second, is the right to trial by jury. *Duncan v. Louisiana*, 391 U.S. 145 (1968). Third, is the right to confront one's accusers. *Pointer v. Texas*, 380 U.S. 400 (1965). *Boykin*, 395 U.S. at 243.

Most importanty, this Court later held that "a plea may be involuntary [if] the accused does not understand the nature of the constitutional protections that he is waiving. . ." *Henderson*, 426 U.S. at 645 n.13 (1976) (internal citations omitted).

It should go without saying that implicit to "understand[ing] the nature of the constitutional [rights]" that one waives by pleading guilty is *being told what those rights are.* In State court, apprising a defendant of his rights can be done by the clerk, defense counsel, or trial court, so long as "the substance of the inquiry [is] analogous to a Rule 11 [(c)(3) of the Federal Rules of Criminal Procedure (requiring the trial court to ensure that the defendant understands and waives his right to jury trial, right to confrontation, and right against self-incrimination before pleading guilty)] colloquy. " *Wade v. Coiner*, 468 F.2d 1059, 1060 (4th Cir. 1972).

In Petitioner's case, a guilty plea was entered without any mention or inquiry whatsoever (neither by the clerk, defense counsel, nor the trial court) as to the waiver of any constitutional rights. In fact, a review of the plea transcript shows that although Petitioner pled guilty, he was never told that he had a right to a jury trial; that he had the right to cross-examine the witnesses against him; or that he had the right to refuse to testify, and that his refusal to testify could not be used against him.

Since there is no mention of the constitutional rights Petitioner was waiving by pleading guilty, there can be no waiver of those rights. If there is no waiver of constitutional rights prior to the entry of a guilty plea, then the plea was not voluntary and knowing. "If a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void." *McCarthy v. United States*, 394 U.S. 459 at 466 (1969) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). Applying the language of this Court's own decisions, there can be no doubt that Petitioner's plea was inconsistent with clearly established federal law. With that said, Petitioner requests that this Court now grant relief.

In determining whether to grant relief to a state court prisoner on federal habeas review, this Court has determined that:

> A state-court decision [is] contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent. Accordingly, in either of these two scenarios, a federal court will be unconstrained by §2254(d)(1) because the state-court decision falls within that provision's "contrary to" clause.

Williams, 529 U.S. at 406.

The decision of the State post-conviction court is "contrary to" this Court's decision in *Boykin*. In that case, as in this case, the record was devoid of evidence to support a view that the defendant knowingly and intelligently waived his constitutional rights and freely admitted his guilt to a criminal offense. The facts in the two cases are "materially indistinguishable," and the State post-conviction court's decision denying relief was therefore an unreasonable application of federal law as established by this Court.

C. The State Post-Conviction Court Unreasonably Applied Federal Law When It Found That Petitioner Knowingly and Voluntarily Entered His Guilty Plea Despite The Fact That The Trial Judge Misadvised Petitioner As To The Consequences Of Being Found Guilty At Trial

The State court advised Petitioner at his plea hearing "that the penalty for first degree murder *is* death by the gas chamber." Appendix D at p. 18a. While this could be construed as a discussion of the maximum penalty for the offense, the advice on this issue was, at a minimum, grossly incomplete and misleading. The court's advise to Petitioner reads as if a conviction for first degree murder in Maryland

carries with it a mandatory death sentence. In reality, in order for a sentence of death to be imposed, the Maryland death penalty statute, Md. Ann. Code art. 27, § 413 (1996), requires the following: (a) that a defendant be convicted of first degree murder; (b) that the defendant be a principal in the first degree to the murder; (c) the presence of a statutory aggravating factor; and (d) that if there are circumstances that mitigate against a sentence of death (either statutory or non-statutory mitigation), that the aggravating circumstances outweigh the mitigating factors by a preponderance of the evidence. If submitted to a jury, these findings must be unanimous. Thus, the State court's advice concerning the penalty to be faced was grossly incomplete and misleading. *See Ivy v. Caspari*, 173 F.3d 1136, 1143 (8th Cir. 1999) (in the context of an ineffective assistance of counsel claim, court vacated the defendant's guilty plea and stated that "counsel erroneously believed that Ivy might face the death penalty and he had so advised Ivy. Ivy, however, was not eligible for the death penalty under Missouri law. Laboring under the misinformation about the possibility of receiving the death penalty, Ivy could not have made a voluntary and intelligent choice between alternative courses of action."); *See also id.* (quoting *Hale v. Lockhart*, 903 F.2d 545, 550-51 (8th Cir. 1990)) ("[t]he threat of the death penalty is a powerful incentive to plead regardless of whether the risk of receiving it is perceived to be great or small.").

This Court has held that "the longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (quoting *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)); *See also Parke v. Raley*, 506 U.S. 20 (1992) (same holding). As far as Petitioner was concerned, the only alternative course of action open to him at the time he pled guilty was a *bench trial* (since he was not apprised of his right to jury trial) and were he to be found

guilty by the judge, a sentence of death. Under those circumstances, it can hardly be said that his decision to plead guilty was a "voluntary and intelligent choice." The State post-conviction court's finding otherwise is an unreasonable application of *Boykin* and *Alford*.

III. THE COURT OF APPEALS ERRED WHEN IT FAILED TO REMAND PETITIONER'S CASE BACK TO THE DISTRICT COURT WHEN THE DISTRICT COURT IMPROPERLY RELIED ON EVIDENCE BEYOND THE PLEA RECORD TO FIND THAT THE STATE POST-CONVICTION COURT HAD NOT UNREASONABLY APPLIED FEDERAL LAW WHEN IT FOUND THAT PETITIONER KNOWINGLY AND VOLUNTARILY ENTERED HIS GUILTY PLEA

Notwithstanding the State post-conviction court's error in finding that Petitioner's plea was entered knowingly and voluntarily, the District Court affirmed the State court's decision. In support of its ruling the District Court found that:

> The testimony presented at the post conviction hearing, along with the plea transcript were sufficient for the post-conviction court to find that [Petitioner] was aware of his right to a jury trial, right to testify or not to testify, right to present evidence and confront his accusers.

Appendix B at p. 11a.

The District Court notes that evidence from the post-conviction hearing (which was held over eighteen years after Petitioner pled guilty) *and* the plea transcript was sufficient for the State post-conviction court to reasonably find that Petitioner waived his constitutional rights. Interestingly enough, the plea transcript is entirely devoid of any mention of Petitioner's right to jury trial, right to testify or not testify, right to present evidence, and right to confront accusers. Since the plea record is silent as to the waiver of

constitutional rights, the District Court necessarily relied *exclusively* on the testimony from the post-conviction hearing to *presume waiver* at the plea hearing and justify the State post-conviction court's ruling. However, "[p]resuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused [intelligently and understandingly waived his constitutional rights]. Anything less is not waiver." *Boykin*, 395 U.S. at 242 (quoting *Carnley v. Cochran*, 369 U.S. 506, 516 (1962)).

Moreover, in *Henderson* (a habeas case from a state court guilty plea), this Court held that the defendant's guilty plea was involuntary based solely on the lack of advice given to the defendant *on the record* (in regards to the *mens rea* element of the crime for which he was charged). *See also Nash v. Israel*, 707 F.2d 298, 301-302 (7th Cir. 1983) (applying *Boykin* to § 2254 Petition and affirming district court's granting of habeas corpus writ where trial judge failed to fulfill "his duty to establish *on the record* that Nash understood the elements of the charge. . . ") (internal footnote omitted) (emphasis added).

The District Court's reliance on the testimony presented at the post-conviction hearing is inconsistent with *Boykin's* mandate that a waiver not be presumed in the face of a silent record. The Court of Appeals should have remanded Petitioner's case back to the District Court to make a determination as to the reasonableness of the State post-conviction court's decision based solely on the evidence contained in the plea record. The Court of Appeals' failure to provide such an order was error, and Petitioner therefore requests of this Court to remand Petitioner's case back to the District Court in the event that certiorari is not granted.

IV. PETITIONER'S CASE GIVES THIS COURT AN OPPORTUNITY TO EVALUATE THE VOLUNTARINESS OF A GUILTY PLEA UNDER THE FEDERAL HABEAS CORPUS STANDARD OF REVIEW

The lower courts' unreasonable application of federal law to Petitioner's case is grounds for granting a Writ of Certiorari pursuant to this Court's Rule 10(a), which provides that one reason for granting the writ is when "a United States court of appeals has . . . sanctioned a departure [from the accepted and usual course of judicial proceedings] by a lower court, as to call for an exercise of this Court's supervisory power[.]"

Aside from the State court's unreasonable application of federal law to Petitioner's case, this case also presents a novel issue which is worthy of this Court's review. Specifically, this case gives the Court an opportunity to evaluate the application of *Boykin* and *Henderson* within the context of a petition for writ of habeas corpus brought under the AEDPA.

Boykin and *Henderson* are landmark cases that essentially established the standard of review for the most common method of adjudication in criminal cases in America: the guilty plea. Likewise, the AEDPA established the standard of review in federal court for one of the most commonly filed post-conviction pleadings in America: a petition for a writ of habeas corpus. With that said, this Court has yet to evaluate an inmate's claim under *Boykin* or *Henderson* in the AEDPA context. In other words, this Court has not addressed the voluntariness of a guilty plea under the "unreasonable application of federal law" standard in existence since 1996.

Given the overwhelming number of state court defendants that plead guilty, and the overwhelming number of inmates that seek a writ of habeas corpus, this Court should decide when either *Boykin* or *Henderson* have been "unreasonably applied" by a state court. Petitioner's case provides an

opportunity for this Court to do just that, while correcting the grave constitutional errors that occurred during the process of his guilty plea.

CONCLUSION

Petitioner respectfully requests that this Honorable Court grant a Writ of Certiorari and reverse the decision of the United States Court of Appeals for Fourth Circuit, or, in the alternative, vacate the judgment of the Court of Appeals and remand Petitioner's case back to the District Court of Maryland with instructions to decide this case only on the evidence contained in the transcript of the guilty plea entered in 1981.

Respectfully submitted,

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APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

No. 01-7981

RONALD QUITMAN ELLIS,
Petitioner-Appellant,

v.

RONALD HUTCHINSON,
Warden, Maryland House of Corrections;
J. JOSEPH CURRAN, JR.,
Attorney General of the State of Maryland,
Respondents-Appellees.

Submitted April 30, 2002
Decided June 3, 2002

PER CURIAM.

Ronald Quitman Ellis seeks to appeal the district court's order denying relief on his petition filed under 28 U.S.C.A. §§ 2254 (West 1994 & Supp.2001). We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court. *Ellis v. Hutchinson*, No. CA-00-1379-JFM (D.Md. Oct. 25, 2001). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED.

APPENDIX B

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

[Filed Oct. 25, 2001]

Civil Action No. JFM-00-1379

RONALD Q. ELLIS,

Petitioner,

vs.

RONALD HUTCHINSON, *et al.*,

Respondents.

MEMORANDUM OPINION

In 1981, Petitioner pled guilty in the Circuit Court for Prince George's County to five counts of first degree murder and one count of manslaughter. He was sentenced to five consecutive life sentences for murder and ten years concurrent for manslaughter. He did not file a direct appeal. Later, two of the life sentences were made concurrent with the first. (Paper No. 24, Ex. 1A).

Petitioner filed his first and only state post conviction petition on April 24, 1997. (*Id.*, Ex. 8). It was denied in a Memorandum and order dated September 20, 1999. (*Id.*, Ex. 12). Petitioner filed an application for leave to appeal to the Maryland Court of Special Appeals which was denied on April 14, 2000. (*Id.*, Ex. 14). He then sought reconsideration of the denial. The motion for reconsideration was denied on May 11, 2000, and the mandate of the Court of Special Appeals issued the same day. (*Id.*, Exs. 16 and 17).

Also on May 11, 2000, Petitioner filed the instant petition for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner argues his guilty plea was not entered knowingly or voluntarily.

The Court directed Petitioner to address the issue of whether the instant petition was timely filed. Subsequently, the petition was dismissed as untimely under 28 U.S.C. § 2244(d) without a show cause order being issued to Respondents. (Paper No. 6). That decision was reversed on appeal. *Ellis v. Hutchinson*, 238 F3d. 411, 2000 WL 1853482 (4th Cir. Dec. 19, 2000) (unpublished).

This Court's decision to dismiss the petition as untimely was based upon the fact that Petitioner's post conviction petition was not filed until April 24, 1997, and at the time this petition was filed, Fourth Circuit case law indicated that the one year grace period for persons whose convictions became final prior to the effective date of the AEDPA expired on April 23, 1997. *See Brown v. Angelone*, 150 F.3d 370, 375 (4th Cir. 1998). Subsequently, the Fourth Circuit clarified that the grace period did not expire until April 24, 1997. *Hernandez v. Caldwell*, 235 F.3d 435, 439 (4th Cir.2000).

Respondents now argue that the petition should again be dismissed as time barred arguing the original petition does not sufficiently specify Petitioner's claim and his Memorandum of Law in Support of Petition for Writ of Habeas Corpus filed on February 22, 2001 is untimely under *Spencer v. Sutton*, 239 F.3d 626 (4th Cir. 2001). This argument was not present to the United States Court of Appeals.[1] That court

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[1] Although Respondents were not required to file a response to the petition prior to its dismissal by this Court, they did participate in the appeal. Respondents did not argue on appeal that the original petition did not sufficiently specify any claims and that any supplement would be time barred. Indeed, Respondents conceded this Court had erred in dismissing the petition. (Paper No. 24, Ex. 19).

specifically held that the petition was "timely filed" and remanded the case for "consideration on the merits." *Ellis*, 2000 WL 1853482, *1. Thus, this Court will not revisit the timeliness issue.

Standard of Review

Effective April 24, 1996, the Anti-Terrorism and Effective Death Penalty Act of 1996 amended 28 U.S.C. § 2254(d) to provide that:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim adjudicated on the merits in State court proceedings unless the adjudication of the claim:
>
> (1) resulted in a decision contrary to, or involved an unreasonable application of, clearly established, federal law as determined by the Supreme Court; or
>
> (2) resulted in a decision based on an unreasonable determination of the facts, in light of the evidence presented in the State court proceedings.

A decision is contrary to clearly established federal law if a state court applies a rule that contradicts Supreme Court precedent or if a state court "confronts a set of facts that are materially indistinguishable from a decision of [the Supreme Court] and nevertheless arrives at a [different] result." *Williams v. Taylor*, 529 U.S. 362, 406 (2000).

"A state court decision that correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular . . . case . . . [qualifies] as a decision 'involving an unreasonable application . . . of clearly established Federal law.'" *Williams*, 529 U.S. at 407-408. Also, "a state determination may be set aside under this standard if, under clearly established federal law, the state court was unreasonable in

refusing to extend the governing legal principle to a context in which the principle should have controlled." *Ramdass v. Angelone*, 530 U. S. 156, 166 (2000).

Guilty Plea

Mr. Ellis was charged with six counts of first degree murder and two counts of use of a handgun in the commission of a crime of violence. (Paper No. 24, Ex. 2). The victims included his wife and two children. The State filed notice it would be seeking the death penalty on each of the first degree murder counts. (*Id.*, Ex. 1A at 3).

The transcript of Mr. Ellis's guilty plea is relatively brief.

THE COURT: Mr. Ellis, would you please stand up, sir. Did you shoot Ingrid Marie Ellis:

THE DEFENDANT: Your Honor, I don't know if I shot anybody.

THE COURT: Did you shoot Tammy Renee Elks?

MR. MUNDY: Your Honor, Mr. Ellis is prepared to answer the question to the court that he killed six people. The Court, I assume, is going to name the persons.

THE COURT: All right, come on up—stand up, please. Did you shoot Ingrid Marie Ellis?

THE DEFENDANT: Yes.

THE COURT: Did you shoot Tammy Renee Elks?

THE DEFENDANT: Yes.

THE COURT: Did you shoot Monica D. Ellis?

THE DEFENDANT: Yes.

THE COURT: Did you shoot Sherry Venice Robinson?

THE DEFENDANT: Yes.

THE COURT: Did you shoot Tyrone Hampton Jackson?

THE DEFENDANT: Yes.

THE COURT: Did you shoot Janet Haroldyne Jackson?

THE DEFENDANT: Yes.

THE COURT: Mr. Ellis, are satisfied up until today with what these three gentlemen, Mr. Mundy, Mr. Kenkel, Mr. Parrone have done on your behalf?

THE DEFENDANT: Somewhat.

THE COURT: Any body threaten you in any way in order to get you to plead guilty?

THE DEFENDANT: You mean physically?

THE COURT: Physically or verbally.

THE DEFENDANT: Not directly.

THE COURT: All right, what does that mean, not directly?

THE DEFENDANT: Not directly. Nobody threatened me directly.

THE COURT: Do you understand, sir, that the penalty for first degree murder is death by the gas chamber? Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you further understand, sir, that the penalty for manslaughter is ten years in jail and a $500 fine? Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You have heard the plea bargaining in this case, as Mr. Mundy has told me at the outset of this case. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Mr. Ellis, are you pleading guilty to these charges because you are in fact guilty of these charges?

THE DEFENDANT: As I told you before, Your Honor, I don't know if I shot anybody.

THE COURT: All right.

All right, Madam Clerk, I find, number one, that the defendant understands the nature of the charges brought against him; secondly I find he is changing his plea of not guilty to that of guilty freely and voluntarily as to Counts One, Three, Four, Six, Seven and Eight.

Strike the pleas of not guilty, enter a plea of guilty to that charge.

I am going to order the defendant to go to Clifton T. Perkins to be examined by a competent psychiatrist to see whether or not he is competent and was competent in regards to all the questions that I asked him.

(Paper No. 24, Ex. 4 at 1-2 to 1-4).

Three days later another hearing was held. At that hearing Dr. Neil Blumberg, a psychiatrist from Clifton T. Perkins testified. Dr. Blumberg testified it was his opinion and that of the other staff members who had participated in evaluating Mr. Ellis that he was competent. (*Id.*, Ex. 5 at 8). The trial judge then found:

> Let the record reflect that based on my participation in this case from its inception and my review of the records and testimony of Dr. Blumberg, I'm convinced beyond a reasonable doubt that Mr. Ellis is competent to stand trial and able to participate in the defense of this case.
>
> Accordingly, Mr. Mundy, we'll proceed with the sentencing. What would you like to tell me, sir?

(*Id.* at 13-14).

Mr. Ellis argues his guilty plea was not knowing and voluntary because the Court did not advise him of any rights that he was forfeiting by entering the plea and misadvised him concerning the penalty. (Paper No. 17).

At his post conviction hearing Mr. Ellis testified he understood the charges against him. (Paper No. 24, Ex. 9 at 1-8). He testified he had no prior experience with the court system. (*Id.* 6 at 1-14-15). He stated he didn't fully understand the ramifications of the plea agreement and:

> I understood what it was for, obviously, you know, but I didn't understand what my rights were.

> I didn't understand that. I didn't understand what my options were. I didn't understand pretty much what was going on.

(*Id.* at 1-16-17). He testified he was aware of his right to a jury trial but was not aware that the verdict would have to be unanimous. (*Id.* at 1-27-28). He stated he knew he had a right to testify but did not know if he didn't it couldn't be used against him. (*Id.* at 1-28). He testified he was aware of his right to call witnesses and cross examine witnesses called by the State. (*Id.*). He testified his attorney had told him that the possible penalties for first degree murder were the death penalty or a life sentence. (*Id.* at 1-29). When asked if he had been threatened Mr. Ellis explained that when he had been served with some papers the Sheriff had said to him: "No matter what happened, we going to get you." (*Id.* at 1-30).[2] Mr. Ellis testified he discussed the plea with his attorney[3] who advised him to accept it. (*Id.* at 1-31-34).

One of Mr. Ellis's attorneys, David Perrone also testified at the post conviction hearing. Mr. Perrone testified Mr. Ellis was aware of his right to a jury trial but did not recall specifically advising him that the verdict must be unanimous. (*Id.*, Ex. 11 at 7). He testified the plea offer was discussed and he recommended that Mr. Ellis accept it because in his opinion there was no realistic possibility that Mr. Ellis might be found not guilty and that the experts they had consulted had said Mr. Ellis did not meet the legal definition of insanity as it then existed. (*Id.* at 8-9). He also testified one of Mr.

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[2] This threat occurred prior to the plea hearing and was apparently related to the fact that Mr. Ellis's wife, one of the victims, had been a police officer. (*Id.* at 1-31).

[3] At trial, Mr. Ellis was represented by three attorneys—R. Kenneth Mundy who served as lead counsel; David Perrone who described himself as Maryland counsel; and James E. Kenkel of the Office of the Public Defender. At the time of the post conviction hearing Mr. Mundy was deceased. (*Id.*, Ex. 11 at 6-7). Mr. Kenkel did not testify.

Ellis's concerns was saving his family the ordeal of a trial. (*Id.* at 9). He testified he discussed both a psychiatric defense and a factual defense with Mr. Ellis and shared with him evidence which had been obtained by the State. (*Id.* at 11-14). He testified the concept of premeditation was discussed. (*Id.* at 14-15). Mr. Perrone testified Mr. Ellis was advised of the sentencing procedures in a death penalty case. (*Id.* at 15-16).

Mr. Perrone testified that prior to Mr. Ellis's plea he had been evaluated by a psychiatrist and a psychologist hired by the defense and that both had opined that Mr. Ellis did not meet the legal definition of insanity. (*Id.* at 16-18).

In addressing the claims relating to the guilty plea the post conviction court concluded:

> This Court has studied the transcript in this case, viewed the totality of the circumstances at the time of the plea agreement, in addition to testimony at the hearing, and this Court finds that the Petitioner did give his plea of guilty intelligently, knowingly, freely and voluntarily. Therefore, this Court finds no error was committed in the acceptance of the Petitioner's guilty pleas.
>
> This Court considered the testimony at the Post Conviction hearing which omitted the Petitioner's claim that he was never advised of his rights to a jury trial or as to what a jury trial consists, or that he was never advised to his right of confrontation and his right to contest the evidence presented throughout a trial by the State, under his claim of due process rights. In addition to the previously omitted claims, this Court follows the holding in *Davis v. State*, 278 Md.103, 114 (1976), that states:
>
> > "that *Boykin v. Alabama*, 89 S. Ct. 1709 (1969), does not stand for the proposition that due process clause requires state trial courts to specifically enumerate certain rights, or go through any particular litany before accepting a defendant's guilty plea; rather we

> think *Boykin* merely holds that the record must affirmatively disclose that the accused entered his confession of guilty voluntarily and understandingly."
>
> Therefore, Petitioner's due process claim that he was never advised of his right to testify, or his right to utilize the Court's subpoena powers are deemed waived by the court record accepting the voluntarily and understandingly plea.
>
> This Court finds the Petitioner's claims 7d-7h shall be addressed under the Petitioner's claim of ineffective assistance of counsel.
>
> This Court finds that the Petitioner failed to meet the burden of proof required to show ineffective assistance of counsel under *Strickland v. Washington*, 466 U. S. 668 (1984).

(Paper No. 24, Ex. 12 at 2-3).

Mr. Ellis describes this conclusion as "totally conclusory." (Paper No. 17 at 14). Where a state court does not articulate its rationale for rejecting a claim, it may not be presumed that its review was cursory or incorrect.

> In such cases, we conduct an independent examination of the record and the clearly established Supreme Court law, *see Bacon v. Lee*, 225 F.3d 470, 478 (4th Cir.2000); *Baker v. Corcoran*, 220 F.3d 276, 291-92 n.14 (4th Cir.2000), but we must still "confine our review to whether the court's determination 'resulted in a decision that was contrary to, or involved an unreason able application of, clearly established Federal law, as determined by the Supreme Court of the United States.'" *Bacon*, 225 F.3d at 478 (quoting 28 U.S.C.A. § 2254(d)(1)).

Bell v. Jarvis, 236 F.3d 149, 158 (4th Cir. 2000), *petition for cert. filed* March 29, 2001, No. 00-9290.

A guilty plea waives a number of constitutional protections including the right against self incrimination, right to a jury trial and right to confront one's accusers. *Boykin v. Alabama*, 395 U. S. 238, 243 (1969). It must be "a voluntary and intelligent choice amount the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U. S. 25, 31 (1970). A plea may be involuntary if the defendant does not understand the nature of the constitutional protections he is waiving or if he has such an incomplete understanding of the charges that the plea is not an intelligent admission of guilt. *Henderson v. Morgan*, 426 U. S. 637, 645 n.13 (1976).

The testimony presented at the post conviction hearing, along with the plea transcript were sufficient for the post conviction court to find that Mr. Ellis was aware of his right to a jury trial, right testify or not testify, right to present evidence and confront his accusers. By his own admission he understood the nature of the charges against him and the possible penalties. Under these circumstances, the post conviction court could reasonably have found the guilty plea to be a voluntary and intelligent choice among the courses of action open to Mr. Ellis.[4]

Accordingly, a separate Order will be entered denying the petition for writ of habeas corpus.

October 25, 2001
Date

/s/ J. Frederick Motz
J. FREDERICK MOTZ
United States District Judge

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[4] It must be noted that Mr. Ellis was facing six counts of first degree murder where the death penalty was being sought. He had been evaluated for a possible insanity plea but his own experts had concluded he did not meet the legal definition of insanity as it then existed. (Paper No. 24, Ex. 11 at 17). There was significant physical and scientific evidence linking Mr. Ellis to the crimes. (*Id.*, Ex. 4 at 5-7). Three of the victims were family members, (*Id.*, Ex. 5 at 14), and Mr. Ellis expressed concern over the effect a trial would have on remaining relatives. (Ex. 11 at 22).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

[Filed Oct. 25, 2001]

Civil Action No. JFM-00-1379

RONALD Q. ELLIS,
Petitioner,

vs.

RONALD HUTCHINSON, *et al.*,
Respondents.

ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is, this 25th day of October 2001, hereby ORDERED that:

1. The Petition for Writ of Habeas Corpus is Denied;

2. The Clerk is directed to mail copies of this order and the foregoing Memorandum opinion to all Counsel of Record; and

3. The Clerk is directed to close this file.

/s/ J. Frederick Motz
J. FREDERICK MOTZ
United States District Judge

APPENDIX C

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY MARYLAND

Case No.: CT81-814

STATE OF MARYLAND

vs.

RONALD QUITMAN ELLIS

MEMORANDUM AND ORDER OF COURT

This matter came before the Court on the Defendant, Ronald Quitman Ellis, Petition for Post Conviction relief, under Article 27, Section 645A *Md. Rule* 4-401 *et. seq.* At the conclusions of the hearings, the Petition was taken under advisement to afford the Court an opportunity to review the file and transcipts.

The Petitioner plead guilty to five (5) counts of first degree murder, and one (1) count of manslaughter. The Petitioner was sentenced on November 12, 1981, to the Department of Corrections to serve five (5) nature life sentences, to run consecutively for the remainder of his life, and sentenced to 10 years, to run concurrently with his life sentences. The Petitioner's sentence was reconsidered on March 26, 1986, and the Court sentenced the Petitioner to serve three (3) natural life sentences, to run consecutively for the remainder of his life, and two (2) natural life sentences to be served concurrently.

The issues before this Court are:

1. Whether error was committed during the acceptance of the plea.

2. Whether the Petitioner was denied due process of law.

3. Whether the Petitioner was denied effective assistance of counsel.

This Court has studied the transcripts in this case, viewed the totality of the circumstances at the time of the plea agreement, in addition to testimony at the hearing, and this Court finds that the Petitioner did give his plea of guilty intelligently, knowingly, freely and voluntarily. Therefore, this Court finds no error was committed in the acceptance of the Petitioner's plea.

This Court considered the testimony at the Post Conviction hearing which omitted the Petitioner's claim that he was never advised of his rights to a jury trial or as to what a jury trial consists, or that he was never advised to his right of confrontation and his right to contest the evidence presented throughout a trial by the State, under his claim of due process rights. In addition to the previously omitted claims, this Court follows the holding in *Davis v. State*, 278 Md. 103, 114, (1976), that states:

> "that *Boykin v. Alabama*, 89 S.Ct. 1709 (1969), does not stand for the proposition that due process clause requires state trial courts to specifically enumerate certain rights, or go through any particular litany before accepting a defendant's guilty plea; rather we think *Boykin* merely holds that the record must affirmatively disclose that the accused entered his confession of guilty voluntarily and understandingly."

Therefore, Petitioner's due process claim that he was never advised of his rights to testify, or his right utilized the Court's subpoena powers are deemed waived by the Court record accepting the voluntarily and understandingly plea.

This Court finds the Petitioner's claims 7d-7h shall be addressed under the Petitioner's claim of ineffective assistance of counsel.

This Court finds that the Petitioner failed to meet the burden of proof required to show ineffective assistance of counsel under *Sirickland v. Washington*, 466 U.S. 668 (1984).

Accordingly, it is this 20th day of Sept, 1999, by the Circuit Court for Prince George's County, Maryland;

ORDERED, that the Petition for Post Conviction Relief be DENIED.

/s/ Graydon S. Mckee, III
GRAYDON S. MCKEE, III Judge

Copies sent to:

State's Attorney's Office

David Simpson, Esq.
9111 Edmonston Road, Suite 402
Greenbelt, Maryland 20770

APPENDIX D

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

Criminal Trials No. 81-814

STATE OF MARYLAND,

vs

RONALD QUITMAN ELLIS,
Defendant,

REPORTER'S OFFICIAL TRANSCRIPT
OF PROCEEDINGS (*Guilty Plea*)

County Courthouse
Upper Marlboro, Maryland
Monday, November 9, 1981

BEFORE:

HONORABLE JACOB S. LEVIN, Associate Judge

APPEARANCES:

For the State of Maryland:

ARTHUR A. MARSHALL, ESQ.
STEVEN P. LEMMEY, ESQ.

For the Defendant:

R. KENNETH MUNDY, ESQ.
JAMES E. KENKEL, ESQ.
DAVID J. PERRONE, ESQ.

THE DEPUTY CLERK: Criminal Trials 81-814, State of Maryland versus Ronald Quitman Ellis.

THE COURT: Mr. Ellis, would you please stand up, sir. Did you shoot Ingrid Marie Ellis:

THE DEFENDANT: Your Honor, I don't know if I shot anybody.

THE COURT: Did you shoot Tammy Renee Ellis?

MR. MUNDY: Your Honor, Mr. Ellis is prepared to answer the question to the Court that he killed six people. The Court, I assume, is going to name the persons.

THE COURT: All right, come on up—stand up, please. Did you shoot Ingrid Marie Ellis?

THE DEFENDANT: Yes.

THE COURT: Did you shoot Tammy Renee Ellis?

THE DEFENDANT: Yes.

THE COURT: Did you shoot Monica D. Ellis?

THE DEFENDANT: Yes.

THE COURT: Did you shoot Sherry Vienice Robinson?

THE DEFENDANT: Yes.

THE COURT: Did you shoot Tyrone Hampton Jackson?

THE DEFENDANT: Yes.

THE COURT: Did you shoot Janet Haroldyne Jackson?

THE DEFENDANT: Yes.

THE COURT: Mr. Ellis, are satisfied up until today with what these three gentlemen, Mr. Mundy, Mr. Kenkel, Mr. Parrone have done on your behalf?

THE DEFENDANT: Somewhat.

THE COURT: Any body threaten you in any way in order to get you to plead guilty?

THE DEFENDANT: You mean physically?

THE COURT: Physically or verbally.

THE DEFENDANT: Not directly.

THE COURT: All right, what does that mean, not directly?

THE DEFENDANT: Not directly. Nobody threatened me directly.

THE COURT: Do you understand, sir, that the penalty for first degree murder is death by the gas chamber? Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you further understand, sir, that the penalty for manslaughter is ten years in jail and a $500 fine? Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You have heard the plea bargaining in this case, as Mr. Mundy has told me at the outset of this case. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Mr. Ellis, are you pleading guilty to these charges because you are in fact guilty of these charges?

THE DEFENDANT: As I told you before, Your Honor, I don't know if I shot anybody.

THE COURT: All right.

All right, Madam Clerk, I find, number one, that the defendant understands the nature of the charges brought against him; secondly I find he is changing his plea of not guilty to that of guilty freely and voluntarily as to Counts One, Three, Four, Six, Seven and Eight.

Strike the pleas of not guilty, enter a plea of guilty to that charge.

I am going to order the defendant to go to Clifton T. Perkins to be examined by a competent psychiatrist to see whether or not he is competent and was competent in regards to all the questions that I asked him.

Anything else, gentlemen?

MR. MARSHALL: Please the Court, if I may, I will not ask any questions, but I think, for the record, considering the fact that we do not have exactly the same type of disposition as to each of the six, that I may make—just continue to make a brief proffer, for the record, as the statement of facts—

MR. MUNDY: I suggest he make it at the bench.

THE COURT: Just a minute—

MR. MUNDY: I suggest he—

THE COURT: All right, come on up, then.

(Counsel approached the bench.)

MR. MARSHALL: I think, in particular, in light of the defendant, as to whether or not he remembers killing anyone, or not killing anyone, or whether he admits to killing someone or otherwise, that the State is entitled, as a statement of the facts, to proffer some additional matters relative, largely speaking, the weapons in question, the FBI testimony.

MR. MUNDY: I have no objection.

MR. MARSHALL: Just briefly. I won't take more than three minutes, four minutes.

THE COURT: You want to do it here?

MR. MARSHALL: I would rather do it back there. But I will limit it to that aspect.

MR. MUNDY: Okay, go ahead.

(Counsel returned to the trial tables.)

THE COURT: Mr. Marshall, do we have orders ready?

MR. LEMMEY: Yes, you signed the order on November 4th.

MR. MARSHALL: The Court has the medical examiner's report, you'll note in the death of Monica that is they're projectile, .38 caliber in nature, which was taken from the right arm of Monica Ellis, which was found in the bedroom, which would reflect that cause of death not only was a shotgun wound but also there was a handgun wound to Monica Ellis. The rest of the victims in that room died as a result of administration of a shotgun would. I point out to the Court, if the FBI were called to testify they made a number of examinations. One of the examinations made was by an agent by the name of Robert Siebert who testified that the firearms involved, State's Exhibit No. 23, fire projectiles and ammunition similar in nature to that which was found in the

particular room at the particular time and place. The shotgun—that the wadding that was found was similar in nature, or identical, in fact, to the manufacture of, origin to that particular western type of ammunition that the weapon that was found at a later date, according to the member of the Indiana State Police, in a car owned by Mary Turner, was, in fact, a .38 caliber Titon revolver; that the .38 caliber Titon revolver has been identified by the Maryland State Police as a having been registered to Ronald Q. Ellis in the State of Maryland; further that the weapon in question, the .38 caliber revolver, and the shotgun involved, both were purchased by Mr. Ellis at the Cheverly Sports Fair, and a representative of the Cheverly Sports Fair, would have so testified to that particular transaction.

The FBI also made an analysis of blood and a determination that on the left sneaker of what has been identified as Ronald Ellis's sneaker was blood which was not his, but has been identified as that type of blood with the necessary ingredients of Ingrid Ellis that they would testify that there was a great deal of antimony barium on the hands of Ingrid Ellis, which would place her in close proximity to the handgun that the FBI would have testified to the fingerprints involed and the .38 caliber projectiles, which were found in the body of both Monica and Ingrid Ellis were fired from the .38 caliber handgun which was taken from the car owned by Mary Turner in Indiana. Mrs. Turner and Mr. Boyd both would have testified as to various conversations they had with the defendant while he was gone, including Mrs. Turner making a statement that Mr. Ellis had said that he had killed six people that day, to her.

Those would have been the witnesses the State would have called to prove its case-in-chief, Your Honor.

MR. MUNDY: I ask that the State withdraw the notice of intention to seek the death penalty, Your Honor. That has not been formally done.

MR. MARSHALL: If the Court accepts the plea of guilty I believe it would be inappropriate at this particular proceeding, till after the examination—

MR: MUNDY Yes

MR. MARSHALL: But we say, for the record assuming the Court accepts the plea, the State intends to withdraw the death penalty, and we would obviously dispose of the other counts at the particular time.

Mr. Mundy and I had tentatively set the date of sentence for Thursday, and after checking with your secretary, that's agreeable.

MR. MUNDY: Yes.

THE COURT: Mr. Kenkel?

MR. KENKEL: Yes.

THE COURT: All right, Madam Clerk, Thursday morning.

MR. MARSHALL: Is he being taken to the hospital now?

THE COURT: I told the sheriff to Perkins, unless he wants to visit with his family.

MR. MUNDY: May he, Your Honor?

THE COURT: Do you want to visit with your family this morning, Mr. Ellis?

THE DEFENDANT: Yes.

THE COURT: Take him this afternoon, will you please.

THE DEPUTY SHERIFF: Yes, sir.

THE COURT: This afternoon.

THE DEPUTY SHERIFF: All right, sir.

MR. MUNDY: Where would they visit, Your Honor? Could they visit here where he could talk to all of them in the courthouse before he's taken back to the lock-up?

THE COURT: Use my chambers. Take him around to my chambers. Thank you very much. Always a pleasure to see you gentlemen. Thursday morning.

APPENDIX E

United States Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless presentment or indictment of a Grand Jury, except in cases arising in land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

United States Constitution, Amendment XIV

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1254

Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. § 2254(d)(1)

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;

Sup. Ct. R. 10(a)

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has

decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

Fed. R. Crim. P. 11(c)(3)

(c) Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands the following:

(3) that the defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury and at that trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, and the right against compelled self-incrimination;

Md. Ann. Code art. 27, § 413 (1996)

Sentencing procedure upon finding of guilty of first degree murder

(a) Separate sentencing proceeding required.—If a person is found guilty of murder in the first degree, and if the State had given the notice required under §§ 412 (b), a separate sentencing proceeding shall be conducted as soon as practicable after the trial has been completed to determine whether he shall be sentenced to death.

(b) Before whom proceeding conducted.—This proceeding shall be conducted:

(1) Before the jury that determined the defendant's guilt; or

(2) Before a jury impaneled for the purpose of the proceeding if:

(i) The defendant was convicted upon a plea of guilty;

(ii) The defendant was convicted after a trial before the court sitting without a jury;

(iii) The jury that determined the defendant's guilt has been discharged by the court for good cause; or

(iv) Review of the original sentence of death by a court of competent jurisdiction has resulted in a remand for resentencing; or

(3) Before the court alone, if a jury sentencing proceeding is waived by the defendant.

(c) Evidence; argument; instructions.—

(1) The following type of evidence is admissible in this proceeding:

(i) Evidence relating to any mitigating circumstance listed in subsection (g) of this section;

(ii) Evidence relating to any aggravating circumstance listed in subsection (d) of this section of which the State had notified the defendant pursuant to §§ 412 (b) of this article;

(iii) Evidence of any prior criminal convictions, pleas of guilty or nolo contendere, or the absence of such prior convictions or pleas, to the same extent admissible in other sentencing procedures;

(iv) Any presentence investigation report. However, any recommendation as to sentence contained in the report is not admissible; and

(v) Any other evidence that the court deems of probative value and relevant to sentence, provided the defendant is accorded a fair opportunity to rebut any statements.

(2) The State and the defendant or his counsel may present argument for or against the sentence of death.

(3) After presentation of the evidence in a proceeding before a jury, in addition to any other appropriate instructions permitted by law, the court shall instruct the jury as to the findings it must make in order to determine whether the sentence shall be death, imprisonment for life without the possibility of parole, or imprisonment for life, and the burden of proof applicable to these findings in accordance with subsection (f) or subsection (h) of this section.

(d) Consideration of aggravating circumstances.—In determining the sentence, the court or jury, as the case may be, shall first consider whether, beyond a reasonable doubt, any of the following aggravating circumstances exist:

(1) One or more persons committed the murder of a law enforcement officer while in the performance of his duties;

(2) The defendant committed the murder at a time when he was confined in any correctional institution;

(3) The defendant committed the murder in furtherance of an escape or an attempt to escape from or evade the lawful custody, arrest, or detention of or by an officer or guard of a correctional institution or by a law enforcement officer;

(4) The victim was taken or attempted to be taken in the course of a kidnapping or abduction or an attempt to kidnap or abduct;

(5) The victim was a child abducted in violation of §§ 2 of this article;

(6) The defendant committed the murder pursuant to an agreement or contract for remuneration or the promise of remuneration to commit the murder;

(7) The defendant engaged or employed another person to commit the murder and the murder was committed pursuant to an agreement or contract for remuneration or the promise of remuneration;

(8) At the time of the murder, the defendant was under sentence of death or imprisonment for life;

(9) The defendant committed more than one offense of murder in the first degree arising out of the same incident; or

(10) The defendant committed the murder while committing or attempting to commit a carjacking, armed carjacking, robbery under §§ 486 or §§ 487 of this article, arson in the first degree, rape or sexual offense in the first degree.

(e) Definitions.—As used in this section, the following terms have the meanings indicated unless a contrary meaning is clearly intended from the context in which the term appears:

(1) (i) The terms "defendant" and "person", except as those terms appear in subsection (d) (1) and (7) of this section, include only a principal in the first degree.

(ii) In subsection (d) (1) of this section, the term "person" means: 1. A principal in the first degree; or 2. A principal in the second degree who:

A. Willfully, deliberately, and with premeditation in-tended the death of the law enforcement officer;

B. Was a major participant in the murder; and

C. Was actually present at the time and place of the murder.

(2) The term "correctional institution" includes any institution for the detention or confinement of persons charged with or convicted of a crime, including Patuxent

Institution, any institution for the detention or confinement of juveniles charged with or adjudicated as being delinquent, and any hospital in which the person was confined pursuant to an order of a court exercising criminal jurisdiction.

(3) (i) The term "law enforcement officer" has the meaning given in §§ 727 of this article.

(ii) The term "law enforcement officer", as used in subsection (d) of this section, includes:

1. An officer serving in a probationary status;

2. A parole and probation officer;

3. A law enforcement officer of a jurisdiction outside of Maryland; and

4. If the law enforcement officer is wearing the uniform worn by the law enforcement officer while acting in an official capacity or is prominently displaying his official badge or other insignia of office, a law enforcement officer privately employed as a security officer or special policeman under the provisions of Article 41, §§ 4-901 through 4-913 of the Code.

(4) "Imprisonment for life without the possibility of parole" means imprisonment for the natural life of an inmate under the custody of a correctional institution, including the Patuxent Institution.

(f) Finding that no aggravating circumstances exist.—If the court or jury does not find, beyond a reasonable doubt, that one or more of these aggravating circumstances exist, it shall state that conclusion in writing, and a sentence of death may not be imposed.

(g) Consideration of mitigating circumstances.—If the court or jury finds, beyond a reasonable doubt, that one or more of

these aggravating circumstances exist, it shall then consider whether, based upon a preponderance of the evidence, any of the following mitigating circumstances exist:

(1) The defendant has not previously (i) been found guilty of a crime of violence; (ii) entered a plea of guilty or nolo contendere to a charge of a crime of violence; or (iii) had a judgment of probation on stay of entry of judgment entered on a charge of a crime of violence. As used in this paragraph, "crime of violence" means abduction, arson in the first degree, escape in the first degree, kidnapping, manslaughter, except involuntary manslaughter, mayhem, murder, robbery under §§ 486 or §§ 487 of this article, carjacking or armed carjacking, or rape or sexual offense in the first or second degree, or an attempt to commit any of these offenses, or the use of a handgun in the commission of a felony or another crime of violence.

(2) The victim was a participant in the defendant's conduct or consented to the act which caused the victim's death.

(3) The defendant acted under substantial duress, domination or provocation of another person, but not so substantial as to constitute a complete defense to the prosecution.

(4) The murder was committed while the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired as a result of mental incapacity, mental disorder or emotional disturbance.

(5) The youthful age of the defendant at the time of the crime.

(6) The act of the defendant was not the sole proximate cause of the victim's death.

(7) It is unlikely that the defendant will engage in further criminal activity that would constitute a continuing threat to society.

(8) Any other facts which the jury or the court specifically sets forth in writing that it finds as mitigating circumstances in the case.

(h) Weighing aggravating and mitigating circumstances.—

(1) If the court or jury finds that one or more of these mitigating circumstances exist, it shall determine whether, by a preponderance of the evidence, the aggravating circumstances outweigh the mitigating circumstances.

(2) If it finds that the aggravating circumstances outweigh the mitigating circumstances, the sentence shall be death.

(3) If it finds that the aggravating circumstances do not outweigh the mitigating circumstances, a sentence of death may not be imposed.

(i) Determination to be written and unanimous.—The determination of the court or jury shall be in writing, and, if a jury, shall be unanimous and shall be signed by the foreman.

(j) Statements required in determination.—The determination of the court or jury shall state, specifically:

(1) Which, if any, aggravating circumstances it finds to exist;

(2) Which, if any, mitigating circumstances it finds to exist;

(3) Whether any aggravating circumstances found under subsection (d) of this section outweigh the mitigating circumstances found under subsection (g) of this section;

(4) Whether the aggravating circumstances found under subsection (d) do not outweigh mitigating circumstances under subsection (g); and

(5) The sentence, determined in accordance with subsection (f) or (h).

(k) Imposition of sentence.—

(1) If the jury determines that a sentence of death shall be imposed under the provisions of this section, then the court shall impose a sentence of death.

(2) If the jury, within a reasonable time, is not able to agree as to whether a sentence of death shall be imposed, the court may not impose a sentence of death.

(3) If the sentencing proceeding is conducted before a court without a jury, the court shall determine whether a sentence of death shall be imposed under the provisions of this section.

(4) If the court or jury determines that a sentence of death may not be imposed, and the State did not give the notice required under §§ 412(b) of this article of intention to seek a sentence of life imprisonment without the possibility of parole, the court shall impose a sentence of life imprisonment.

(5) If the State gives the notice required under §§ 412(b) of this article of intention to seek a sentence of imprisonment for life without the possibility of parole but does not give notice of intention to seek the death penalty, the court shall conduct a separate sentencing proceeding as soon as practicable after the trial has been completed to determine whether to impose a sentence of imprisonment for life or imprisonment for life without the possibility of parole.

(6) If the State gives the notice required under §§ 412(b) of this article of intention to seek the death penalty in

addition to the notice of intention to seek a sentence of imprisonment for life without the possibility of parole, and the court or jury determines that a sentence of death may not be imposed under the provisions of this section, that court or jury shall determine whether to impose a sentence of imprisonment for life or imprisonment for life without the possibility of parole.

(7) (i) In determining whether to impose a sentence of imprisonment for life without the possibility of parole, a jury shall agree unanimously on the imposition of a sentence of imprisonment for life without the possibility of parole.

(ii) If the jury agrees unanimously to impose a sentence of imprisonment for life without the possibility of parole, the court shall impose a sentence of imprisonment for life without the possibility of parole.

(iii) If the jury, within a reasonable time, is not able to agree unanimously on the imposition of a sentence of imprisonment for life without the possibility of parole, the court shall dismiss the jury and impose a sentence of imprisonment for life.

(8) If the State gives the notice required under §§ 412 of this article of the State's intention to seek a sentence of imprisonment for life without the possibility of parole, the court shall conduct a separate sentencing proceeding as soon as practicable after the trial has been completed to determine whether to impose a sentence of imprisonment for life or imprisonment for life without the possibility of parole.

(l) Rules of procedure.—The Court of Appeals may adopt rules of procedure to govern the conduct of a sentencing proceeding conducted pursuant to this section, including any forms to be used by the court or jury in making its written findings and determinations of sentence.

(m) Alternate jurors.—(1) A judge shall appoint at least 2 alternate jurors when impaneling a jury for any proceeding:

(i) In which the defendant is being tried for a crime for which the death penalty may be imposed; or (ii) Which is held under the provisions of this section.

(2) The alternate jurors shall be retained during the length of the proceedings under such restrictions and regulations as the judge may impose.

(3) (i) If any juror dies, becomes incapacitated, or disqualified, or is discharged for any other reason before the jury begins its deliberations on sentencing, an alternate juror becomes a juror in the order in which selected, and serves in all respects as those selected on the regular trial panel.

(ii) An alternate juror may not replace a juror who is discharged during the actual deliberations of the jury on the guilt or innocence of the defendant, or on the issue of sentencing.